

Office of Health Insurance Programs

Division of Long Term Care

Managed Long Term Care Policy 18.01: Fiscal Intermediary Advertising Review and Approval

Date of Issuance: September 26, 2018

FISCAL INTERMEDIARY ADVERTISING REVIEW AND APPROVAL

New York Social Services Law Section 365-f requires all Fiscal Intermediaries (FIs) be authorized by the New York State Department of Health (DOH). The application for FI Authorization requires FIs to include the submission of all marketing or outreach materials to DOH as attachments to the application. Chapter 57 of the Laws of 2018 requires FIs to submit all advertising materials for approval by DOH before use. The law also establishes penalties for FIs that disseminate unauthorized, false, or misleading advertisements in two or more promotional campaigns/outreach actions.

This guidance is applicable to advertising materials used by FIs on or after November 1, 2018.

Definition of Advertising

Advertising is any material produced in any medium that can reasonably be interpreted as an effort to market the FI's services to medical assistance (Medicaid) beneficiaries. Advertising includes any information produced by, or on behalf of, a particular FI that references the FI and/or the Consumer Directed Personal Assistance Program or Consumer Directed Personal Assistance Services (CDPAP/CDPAS) and is intended for distribution through print, broadcast, digital or direct marketing mechanisms. Advertising mediums include, but are not limited to, media campaigns comprising of any television, radio, billboards, subway and bus posters, electronic messages, and social media on any platform or device.

General Standards

Inaccurate descriptions of the CDPAP program or the roles and responsibilities of CDPAP participants, designated representatives, fiscal intermediaries, and/or aides will be considered false or misleading. False or misleading advertising will not be approved, and will be considered an advertising violation if disseminated. If the Department authorizes an advertisement, it means the Department determined at that time that it is not false or misleading.

Permitted/Impermissible Advertising Activities

Advertising activities may not discriminate based on a potential beneficiary's health status, prior health service use, or need for future health care services. In addition, advertising must not discriminate against any population or socioeconomic group.

FIs may not conduct "cold call" telephone solicitations. Door-to-door solicitation is also prohibited.

FIs may not offer material or financial gain to Medicaid beneficiaries as an inducement to participate in CDPAP and/or utilize a specific FI. Specifically, providers and plans may only:

1. Make statements in advertising that are consistent with the roles and responsibilities of the FI and CDPAP, as set forth in SSL §365-f and 18 NYCRR §505.28
2. Offer only nominal gifts, in accordance with current federal guidance, regardless of a beneficiary's intent to utilize the FI

The Submission Process and Requirements

DOH will accept the submission of advertising materials via email to FIMarketing@health.ny.gov.

If hard copy is required, please send to the following address:

NYS DOH DLTC
Suite 1624, 99 Washington Ave
Albany, NY 12210

DOH will assign each unique advertising material submission its own identification number.

Advertising materials that consist of a website with links to electronic/digital attachments must be submitted to DOH in English and in hard-copy format, comprising of a hard-copy page for each webpage. DOH will not accept the submission of a website for review without hard-copy supplements.

In its submission for advertising, the FI must identify the intended types of media (e.g., billboards, posters, print radio, digital, etc.) and target audience (e.g., providers, caregivers, family members, etc.).

Once submitted, DOH will notify the FI of receipt via email.

The Review Period

Materials for Use on or after November 1, 2018

Advertising materials intended to be used on or after November 1, 2018 must be submitted to DOH for review. DOH will have thirty (30) calendar days to review the submission. The 30-day review period begins on the first day following the DOH email acknowledging receipt of the advertising materials.

- During the review period, FIs may not use any new advertising materials that have not been approved.

- The unique identification number assigned by DOH shall be noted in the bottom left hand corner of the advertising material for internal review and tracking purposes.
- Advertising materials that have been disapproved by DOH may not be utilized.
- Advertising materials that have not received either approval or disapproval from DOH may be utilized at the expiration of the 30-day review period.
 - FIs must cease use of such materials within 30 days if notification is received from DOH that such materials are false or misleading.
 - This does not apply if DOH has requested, but has not received, missing or needed information during the 30-day review period.

Materials in Use Prior to November 1, 2018

Advertising materials used prior to November 1, 2018 are not required to be submitted to DOH for review. Such materials may, however, be voluntarily submitted to DOH for review until December 31, 2018 for an “FI Advertising Amnesty.”

- If DOH determines that the advertising material is false or misleading, DOH will send a notification of disapproval to the FI and the FI will be required to cease use of the advertisement within 30 days of notification.
- Advertising material disapproved as part of the voluntary FI Advertising Amnesty will not count towards the total allowable amount of two or more promotional campaigns/outreach actions that comprise of unauthorized, false, or misleading advertisements.

Advertising materials that were submitted to DOH as part of an FI Authorization Application will not be reviewed as part of the FI Authorization Application. If previously submitted advertisements are still in use, FIs may choose to submit those materials under the FI Advertising Amnesty policy.

The Approval/Disapproval and FI Appeal Process

DOH will notify the FI whether each advertising material, by unique identification number, is approved or disapproved for use. Approved advertising materials may only be used “as submitted.”

During the review period, DOH may request missing or needed information from the FI. DOH will allow two (2) business days for submission of the missing or needed information, at which point the 30-day review period will be extended by one (1) business day for each business day in which information is not received. If the information is not provided within 30 days after request, the Department may, in its discretion, disapprove the advertising materials.

The FI has thirty (30) days to appeal a decision that their advertising materials have been found to be false or misleading. DOH will review an appeal within thirty (30) days. No penalty will be assessed during the appeal submission and review period. If the determination that the advertising is false and misleading is upheld, a penalty will be issued.

Any questions about the advertising rules or the submission and approval process should be directed to FIMarketing@health.ny.gov.